IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL WRIT PETITION NO.2568 OF 2005

Shri Hansraj Kashinath Verma .. Petitioner

v/s.

The State of Maharashtra & ors. .. Respondents

Mr.M.V.Aiya for the petitioner.

Mr.A.S.Shitole, Addl. Public Prosecutor for the State.

CORAM : SMT.RANJANA DESAI AND ANOOP V. MOHTA, JJ.

DATED : 20th October, 2005.

P.C.

Rule.

2. By consent of the parties, this matter is taken up for hearing forthwith.

3. The petitioner claims to be the Manager of M/s.Eagle Rubber Industries, having its office at Unit No.23/) B Block, Ghatkopar Industrial Estate, L.B.S.Marg, Ghatkopar (West), Mumbai.

4. By way of this petition, the petitioner has prayed for quashing of chapter case No.67 of 2005 and the show-cause notice dated 7.9.2003 issued by respondent No.2-Special Executive Magistrate, Vikhroli Division, Vikhroli under section 107 of

the Criminal Procedure Code.

5. We have heard at length the learned counsel appearing for the appellant and the learned A.P.P. The learned counsel for the petitioner contended that the impugned notice indicates that the offences under section 51, 63 and 65 of the Copyright Act, 1957 are alleged against the petitioner. Section 51 of the said Act speaks as to when Copyright is infringed. Section 63 thereof speaks of offence of infringement of Copyright or other rights conferred by this Act and section 65 thereof speaks of punishment for possession of plates for purpose of making infringing copies. LAC No.538 of 2005 is registered at Parksite Police Station, Vikhroli. This is the only case registered against the petitioner.

6. For the case to fall under section 107 of the Criminal Procedure Code, there has to be an apprehension of breach of peace or likelihood of disturbance of public tranquility. We fail to understand how the offences under the Copyright Act in respect of which a case is registered would lead to breach of peace and disturbance of public tranquility. The learned counsel for the petitioner has rightly drawn our attention to the judgment of the learned Single Judge of this court in Jitendra R.Deshprabhu and ors. v. Executive

Magistrate and anr. 1992(1) Bom.C.R.233 where the learned Single Judge was considering the scope of section 107 of the Criminal Procedure Code. The learned Single Judge has after referring to the Full Bench decision of the Kerala High Court in Moidu v. State of Kerala, 1982 Cri.L.J. 2293 rightly observed that the proceedings under section 107 of the Criminal Procedure Code should not be used as a parallel proceedings and they are never intended as punitive action but merely preventive. A bare perusal of the impugned notice indicates that there are even no averments made that on account of the petitioner's activities, there is any breach of peace or disturbance of public tranquility. We feel that in the facts of this case the police ought not to have resorted to section 107 of the Criminal Procedure Code.

7. We, therefore, feel that the chapter proceedings deserve to be quashed. We, however, make it clear that on the merits of the LAC No.538 of 2005, we have not expressed any opinion and if the petitioner is found guilty of any offences under the Copyright Act, the court seized of the matter will be free to pass appropriate orders in accordance with law. This order is passed in the peculiar facts of this case and should not be treated as a precedent.

8. In view of the above, chapter case No.67 of 2005 and the impugned notice dated 7.9.2005 are quashed. Petition disposed of in the aforesaid terms.

(SMT.RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)